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Name of Appellant, assignee or registered representative

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Signature

March 29, 2007
Date of Signature

PATENT
Case No. AUS920010923US1
(9000/81)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:)	
)	
ANTHONY E. MARTINEZ, ET AL.)	Examiner: BONSHOCK, D. G.
)	
Serial No.: 09/981,877)	
)	Group Art Unit: 2173
Filed: OCTOBER 18, 2001)	
)	
Title: METHOD OF PREVIEWING A)	
GRAPHICAL IMAGE CORRESPONDING))	
TO AN ICON IN A CLIPBOARD)	

REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22202-1450

Dear Sir:

Appellants respectfully present their Reply Brief as follows:

The Examiner continues to mistake the elements of an anticipation rejection, as well as the requirements for a document to even qualify as “prior art.” For the sake of brevity, Appellants will address the Examiner’s mistaken arguments. Details on Appellants’ arguments can be found in the direct brief, which will not be replicated here.

“MS Word” does not anticipate the claims.

Specifically, the Examiner confuses “text” and “graphics” and argues that a display of text is graphics. However, as previously noted by Appellants, graphics and text are different. Further, the Examiner ignores the actual claim language - “displaying the graphical image associated with the icon in response to the icon preview instruction” – in several instances.

First, the determination of patentability must start with the actual claim language being discussed “displaying the graphical image associated with the icon in response to the icon preview instruction.” Thus, any ‘reference’ alleged to be anticipatory must teach, in at least as great detail as claimed, displaying the graphical image *associated with the icon* in response to the icon preview instruction. The Examiner’s arguments relating to displays of the graphical depiction ‘Picture 2’ are misplaced – the display of “picture 2” is utterly unrelated to the *graphical image* associated with the icon, but instead, is related to a factor unrelated to the contents of the graphical depiction – specifically, an order in which the picture was added to a certain list. The Examiner cannot credibly argue that the order in which a copy command has been issued is related in any fashion to the target of the copy command.

Second, the Examiner confuses text and graphics. Returning to the claim language “*displaying the graphical image associated with the icon in response to the icon preview instruction*”, the Examiner erroneously concludes that the display of *text* is the same as display of the *graphical image associated with the icon*. Even if the Examiner were correct in arguing that displaying text is graphics, the point is misplaced and not relevant to the patentability of these claims. The display of text is not, and cannot be, associated with the icon.

“MSWord” is not a proper reference

The MPEP is clear that a particular document qualifies as a reference, if and only if “upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that person interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it.” See MPEP 2128, *In re Wyer*, 655 F.2d 221 (CCPA 1981). The Examiner’s only response is that FIG. 8 illustrates a copyright date of 1983-1999 and argues that “this alone proves that the MSWord reference was known and used prior to the filing of the applicants claimed invention.” The Examiner is flatly mistaken.

First, the copyright dates of a computer program are *irrelevant* to its status as a printed publication. Further, the screenshot illustrating the *copyright dates does not show the allegedly anticipatory method in action*, and therefore this document provides no evidence whatsoever of when the Examiner’s alleged functionality was introduced into the program or became “known and used”.

Second, a claim to copyright is not the same as “showing that such document has been disseminated or otherwise made available to the extent that person interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it.” Copyright attaches to a document without any dissemination at all – the mere existence of a copyright notice is plainly irrelevant to its status as a printed publication.

In other words, whether or not a software program known as MS Word has been known and used prior to filing is utterly irrelevant to the patentability of these claims. The only relevant reference that could affect the patentability of these claims is one that has been disseminated or otherwise made available to the extent that person interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it. Plainly, these screenshots of the Examiner’s computer do not qualify as a reference, never mind that the screenshots were taken years after filing.

Thus, Appellants request withdrawal of the rejections to claims 1-16.

CONCLUSION

The Appellants respectfully submit that claims 1-16 fully satisfy the requirements of 35 U.S.C. §§102, 103 and 112. In view of the foregoing, favorable consideration and early passage to issue of the present application is respectfully requested.

Dated: **March 29, 2007**

Respectfully submitted,
ANTHONY E. MARTINEZ, *et al.*

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